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Current Topics.

Mr. Justice Farwell.

Mr. Justice FARWELL, who died on 16th April, was undoubtedly one of the brightest ornaments of the English bench. Born in 1877, a son of the late Lord Justice FARWELL, and of a daughter of Vice-Chancellor WICKENS, he received his education at Winchester College. He was twenty-five years of age when called to the Bar at Lincoln's Inn, his father having been made a judge three years previously, and twenty-one years later, in 1923, he took silk. In 1928 he became a Bencher, and in 1929 became a judge of the Chancery Division. In 1936 he succeeded Lord Justice GREER (now Lord FAIRFIELD) as Chairman of the Council of Legal Education. To the practitioner in his courts, to the litigant and to the spectator alike he seemed to present the embodiment of English justice in its most ideal form, its speed, efficiency, and its almost miraculous reduction of the "wilderness of single instances" of case law to those legal principles the soundness of which is based on the rock of practical experience. Many were the occasions when the late judge could be heard to cut short what might otherwise have been a lengthy citation from a row of volumes in front of counsel by a remark that if counsel meant to read a particular line of cases, he could save himself the trouble, as they all boiled down to a proposition of law which his lordship would proceed to expound. This, the highest gift of the lawyer, has been enjoyed by few, and those only the greatest of our judges. When required, the late judge would turn his great ability to heavy tasks such as the preparation of the third edition of "Farwell on Powers." It was a great pity that, as often happens, a great mind was housed in a frail body, and it was a source of grief to his friends and admirers that his last year was marred by pain and illness.

Lieut.-Comdr. Hichens.

IT is with deep regret that we record the death on active service of Lieutenant-Commander ROBERT PEVERELL HICHENS, D.S.O., D.S.C., R.N.V.R., senior officer of a flotilla and an outstanding figure in the coastal forces of the Royal Navy. He was admitted a solicitor of the Supreme Court in December, 1933, and practised with the firm of Reginald Rogers & Son, of Falmouth. Educated at Marlborough and Magdalen College, Oxford, he showed his interest in the sea at an early age. He was a member of the Royal Ocean Yacht Club and competed with the greatest of success in international dinghy races. He was also an amateur driver in motor-car races and regained the championship for Great Britain in a great race in France before the war. Joining the R.N.V.R. on the outbreak of war, he was appointed to the minesweeping and later to the coastal services. He gained a bar to his D.S.O. and two bars to his D.S.C., and was twice mentioned in dispatches, and did brilliant work in over fifteen coastal actions, as well as in the Dunkirk rescue. The tribute has been paid to him that his achievements were as much due to his capacity for planning as for cool courage. Of him it may be said, as HERBERT ASQUITH said of the volunteer in the last war: " . . . he lies content With that high hour, in which he lived and died. And falling thus, he wants no recompense, Who found his battle in the last resort; Nor needs he any hearse to bear him hence, Who goes to join the men of Agincourt."

The Budget.

PARADOXICAL though it may seem, it is a satisfying experience for a Chancellor to present a budget in these days of gigantic expenditure. The willingness of the public to bear any sacrifice in the greatest of causes in history makes the announcement of new burdens a pleasure rather than an unwelcome task. The unprecedented figure of £2,483,000,000 has been realised by taxation in the past year, and for the first time in history more than £1,000,000,000 has been collected in income tax. No less than 44 per cent. of all our expenditure since the war began, according to the Chancellor, has been met by current domestic revenue. The increased taxation from liquor, tobacco and entertainments amounted to £452,000,000, or 83 per cent. of the indirect taxation. The cost of living index has at no time risen higher than 30 per cent. above the pre-war level and for most of the time it has been below that figure. The food index is 20 per cent. above the level at the outbreak of the war as compared with 23 per cent. in April, 1941. The whole volume of consumption goods and services, including luxury goods and other non-essentials, has not risen in price by more than 36 per cent. After giving these facts, the Chancellor announced the exemption from purchase tax of certain utility goods, the widening of the scope of the housekeeper and dependent relative allowances and the new taxes on tobacco, beers, entertainments, fur coats, silks and other luxuries. He stated that he expected to receive £102,000,000 in the current year from additional taxation and £110,000,000 in a full year. One of the most revealing of the Chancellor's statements related to the cost of the policy of stabilisation of prices, which was now running at about £180,000,000 a year. Subsidies had not been directed exclusively to price stabilisation, said the Chancellor, but also included expenditure incurred primarily for nutritional purpose, like the national milk scheme and the school meals scheme. Price control now covered probably 90 per cent. of the average housewife's expenditure. Another feature which is implicit in the omission of any increase in direct taxation is the great success of voluntary saving, but public efforts will without doubt have to continue and increase, if forced saving in one form or another is to be avoided. If the present successful handling of the nation's finances can be combined with foresight into the greater problems of post-war finance, the nation can look forward to the future with confidence.

Conveyances of Registered Land.

THE obvious advantage of a system of land registration is that it dispenses with the need for elaborate investigations of title. Apparently the system has not been a complete success in this country, for the Council of The Law Society has found it necessary to attempt, in a notice in the April issue of *The Law Society's Gazette*, to correct a current practice by which some solicitors appear to have voluntarily surrendered some of the advantages of registration. It is provided by s. 110 (1) of the Land Registration Act, 1925, that, notwithstanding any stipulation to the contrary, it is the vendor's duty to furnish the purchaser (at the vendor's expense) with an authority to inspect the register. If required, he must also provide a copy of the subsisting entries and of any filed plans and copies or abstracts, except of certain charges or incumbrances. In the absence of stipulation to the contrary, the purchaser is to bear the costs of these copies and abstracts unless the purchase-money is over £1,000. Under subs. (2) the vendor, subject to any stipulation to the contrary, must at his own expense furnish the purchaser with such copies, abstracts and evidence (if any) as to matters on which the register is not conclusive and of matters excepted from the effect of registration, as the purchaser would have been entitled to if the land had not been registered. Under subs. (3), notwithstanding any stipulation to the contrary, the vendor need not furnish the purchaser with any abstract or written evidence of title or any copy or abstract of the land certificate, or of any charge certificate, except as provided in subs. (2). The Council states that a not uncommon practice has arisen for the vendor's solicitor to supply, free of charge, to the purchaser's solicitor, an abstract of title to the property, in excess of their duty under s. 110 (1). The authority to inspect the register and the official copy required by s. 110 (1) can be obtained at the Registry for the nominal fee of 1s. 6d. The Council considers that the practice of delivering abstracts otherwise than as required by s. 110 (2) results from an insufficient appreciation of the convenience of the method prescribed by the Act. The most convenient practice, the

Council suggests, is for the vendor's solicitor to obtain an office copy of the entries on the register and filed plan and send it to the purchaser's solicitor on the exchange of contracts. If the purchaser did not request this procedure the Council considers it probable that the result under s. 110 (1) would be in every case to throw the expense of obtaining the office copies on the vendor, whatever the amount of the purchase-money. This is, however, a very small expense, to which no vendor could reasonably object.

Advertisements under the Trustee Act.

A NEW procedure instituted as a result of representations by the Council of The Law Society and the intervention of the Lord Chancellor's department has been announced in the April issue of *The Law Society's Gazette* for advertisements under s. 27 of the Trustee Act, 1925. The previous need for individual advertisements has resulted in some waste of paper, and therefore in the issue of the *London Gazette* for the 4th May, and in subsequent issues during the war, advertisements for claimants against the estates of deceased persons will appear in columnar form under the heading: "Notices under The Trustee Act, 1925, s. 27." The heading will be followed by a table consisting of four columns, containing, respectively, the following particulars only: (1) name of deceased; (2) address, description and date of death of deceased; (3) names, addresses and descriptions of persons to whom notices of claims are to be given, and names of personal representatives; (4) date on or before which notices of claim are to be given. A charge of 15s. will be made in respect of every advertisement submitted for inclusion in the table appearing in the issue of the *Gazette*. Copies of the page containing the advertisement will be furnished to the advertiser on an application accompanied by payment at the rate of 6d. per copy. Advertisers wishing to insert advertisements in issues of the *Gazette* after 30th April should send to the *London Gazette* the appropriate remittance with the following particulars: name of deceased; address; description; date of death; name(s) and address(es) of person(s) to whom notices of claim are to be given; name(s) of executor(s); date on or before which notices of claims must be given; amount of remittance; whether postal order or cheque. Advertisements will not be inserted unless signed or attested by a solicitor of the Supreme Court. The full terms of the notice are set out at p. 122, *ante*.

Agriculture (Miscellaneous Provisions) Bill.

THE Council of The Law Society, according to a statement in the April issue of *The Law Society's Gazette*, has secured action by the Ministry of Agriculture with regard to cl. 9 of the Agriculture (Miscellaneous Provisions) Bill, under which a landlord can, in certain circumstances, recover from his tenant the cost of works for the supply of water executed on the land let to him. The Council pointed out to the Minister that it might well be that a landowner might wish to recover from a tenant the cost of works which benefited the tenant, but which were carried out on land not let to him, and that it was unfair that a landlord should be empowered to recover from a tenant the cost of works executed on land let to him which did not benefit him but some other party. The Minister agreed with the Council's contentions and introduced an amendment on the Committee Stage of the Bill to meet these points. Under cl. 10 of the Bill the Minister may recover from persons entitled to certain grazing rights the cost of improvements to the land over which those rights were exercised. The Bill contains no limitation on the amount which can be so recovered, and the amount recoverable might therefore exceed the value of the grazing rights. On representations by the Council, the Minister found himself unable to accept an amendment to limit the amount so recoverable, and the Council therefore arranged for the amendment to be moved on Committee stage in the Commons. It was then explained by the Minister that the clause dealt only with certain fells in Cumberland, and an assurance was given that the power conferred on him by the Bill would be exercised equitably. He said that it was purely experimental, and he did not wish to be fettered by any restriction in the Act, when it was not known how the matter might turn out. The amendment was withdrawn, in view of these assurances.

The Beveridge Plan and Friendly Societies.

ON 30th March the meeting of the National Conference of Friendly Societies opened, and among its most important business was the consideration of the Beveridge Report on Social Security, having particular regard to the report of the actuary acting on behalf of the societies that the total capital liability under sickness benefits paid by the societies on their independent side will be increased roughly by £12,650,000 if the Beveridge plan operates. Some of the criticisms of the Beveridge plan were based on the past record of the friendly societies, which, as one representative said, had not failed in the thirty years of their existence, and should be trusted again in the further development of social service. It was also suggested that the full adoption of the Beveridge Report would eliminate the services of 500,000 voluntary friendly society workers throughout the country, and would result in loss of contact with members, some voluntarily insured and some State insured, and would create a dual system of administration. It was argued that the bureaucratisation and dehumanisation of the friendly societies would wreck the scheme and make it sterile. After some discussion the conference adopted a motion instructing its committee to press the Government to maintain approved societies as a suitable medium for the collection of contributions and the administration at least of disability benefit, marriage and funeral grants. The friendly societies do not appear to have found fault with the main security proposals of the plan. It is interesting to find that the report does not find much to complain of in the record of the friendly societies. It attributes the growth of the friendly society movement to the introduction of statutory national health insurance in 1911, and adds that the growth has been steady rather than spectacular, and that these societies still cover not much more than a quarter of the total number for whom disability benefit is intended. That proportion, the report stated, is too low to justify keeping compulsory disability benefit below subsistence level, but large enough to make it unnecessary for the State to take action in regard to voluntary insurance against sickness, except to leave scope and encouragement for the friendly societies. The report recommended the disappearance of financially independent approved societies as administrators of compulsory cash benefits for sickness, but added that societies giving friendly benefits of a substantial amount would be able under arrangements with the Ministry of Social Security to act as agents for paying out together their voluntary benefits and the benefits of the compulsory scheme. It is thus difficult to see the substance in the criticism that the adoption of the report would result in bureaucratising the work of the societies.

Recent Decisions.

In *Curran* v. *Wembley Stadium, Ltd.*, on 7th April (*The Times*, 8th April), TUCKER, J., held that the injuries of a plaintiff who fell down a public staircase at dog races as a result of a crowd pressing behind her, were not due to any failure by the defendants to provide proper control of the crowd or handrails on the staircase, or any device for splitting the crowd, but to inconsiderate people who pushed and jostled, and that the plaintiff's action for damages therefore failed.

In *Conway* v. *Stocks*, on 9th April (*The Times*, 10th April), the Divisional Court (VISCOUNT CALDECOTE, L.C.J., and LEWIS and CASSELS, JJ.) held that the certificate of the national service officer, to whom a case of absenteeism was reported, stating that a committee or other joint council in the works which would be appropriate to deal with the matter did not exist, was conclusive under art. 6 (4) of the Essential Works (General Provisions) Order, provided that he gave his opinion in good faith. The only matters into which the justices could inquire under the words "unless the contrary is proved" were held to be whether the signature which purported to be that of the officer was in fact his, or whether it did not express his real opinion.

In *In re Anglo-International Bank, Ltd.*, on 12th April (*The Times*, 13th April), BENNETT, J., held that a special resolution for the reduction of the company's capital had not been properly passed, as ninety-nine shareholders holding 46,552 shares, who had addresses in enemy-controlled territory, had not been served with notices of the meeting at which the special resolution was passed.

In *R.* v. *Hudson*, on 14th April (*The Times*, 15th April), the Court of Criminal Appeal (CHARLES, TUCKER and CROOM-JOHNSON, JJ.) held that where a cheque was inadvertently sent by the Ministry of Food to the appellant instead of to a Mr. HUTSON and the appellant paid it into his bank and drew cash against it, the cheque was palpably valuable and palpably belonged to someone else, and that the appellant had decided to appropriate it and had committed everything necessary to complete the offence of stealing it.

In a case in the Court of Criminal Appeal, on 15th April (*The Times*, 16th April), the court expressed disapproval of any criminal court making itself into a medium for making people pay their debts. The charge had been one of embezzlement, and the accused had been convicted and then bound over to come up for judgment if called on on the condition that he repaid 10s. a week until the whole of the amount of £70 concerned was repaid. Nearly two years later he was sentenced to six months' imprisonment because he was £1 in arrears in his repayments. HUMPHREYS, J., said that imprisonment for debt was supposed to have been abolished in this country, and that the prosecutors could have gone to the county court and probably obtained an order for the payment of a much smaller sum. The sentence on the appellant was changed to one which enabled him to be discharged immediately.

In *Hodge* v. *Ultra Electric, Ltd.*, on 15th April (*The Times*, 16th April), the Divisional Court (CHARLES, TUCKER and CROOM-JOHNSON, JJ.) held that "reinstatement" in the Essential Works (General Provisions) Order meant the putting back of the person dismissed, so far as humanly possible, in the same position as he or she was immediately before dismisssal both as regard to wages and to work, but if the employers, acting *bona fide*, did all they could to find work and nevertheless failed, mere payment of wages would amount to reinstatement.

Re Anglo-International Bank, Ltd.

II.—Enemy Shareholders.

WE commented last week on certain observations of Mr. Justice Bennett in *Re Anglo-International Bank, Ltd.* (*The Times*, 23rd March, 1943), regarding communications with persons in enemy territory. In that case he held that resolutions for reducing the capital of the company had not been validly passed because no notices had been posted to shareholders resident in enemy territory of the extraordinary general meeting at which the proposed reduction was considered. The ground for the decision was that a resolution for the reduction of capital must be passed in accordance with s. 117 of the Companies Act, 1929, which requires a twenty-one days' notice, and provides that notices shall be deemed to be duly given when they are given in the manner provided by the articles; the articles here concerned contain the ordinary provision that notices should be served on members of the company personally or by post.

The basis of the decision was that the shareholders resident in enemy territory were entitled to notice of the meeting, and that notice had not been duly served upon them. It is respectfully submitted, however, that there is reason to doubt whether one material aspect of the case was fully put before the learned judge. The question is whether the shareholders concerned were entitled to any notice of the meeting at all.

In "Stiebel on Company Law," 3rd ed., p. 338, the following statement appears: "Notice must be given to every member who is entitled to be present and vote and is within reach, unless the articles contain anything to the contrary." For this proposition the learned author cites *Smythe* v. *Darley* (1849), 2 H.L.C. 789. He proceeds: "but probably members who are not entitled to be present or vote will not be entitled to notice, unless, indeed, the reason why they cannot vote is of such a nature that it may be removed before the meeting is held" (see *Re Mackenzie & Co., Ltd.* [1916] 2 Ch. 450). Reference is also made to *Re Union Hill Silver Company* (1870), 22 L.T. 400.

In *Smythe* v. *Darley* the House of Lords (consisting of Lord Campbell and Lord Brougham) considered whether the Corporation of Dublin had duly elected a certain person as treasurer of the city and county. The election had to take place under the terms of a statute of George III, which required it to be made by the magistrates. The recorder did not receive notice of the meeting and was not present. The question before the House of Lords was whether those facts invalidated the proceedings. On this point Lord Campbell said: "The election being by a definite body on a day on which, until summons, the electors had no notice, they were all entitled to be specially summoned, and, if there was any omission to summon any of them, unless they all happened to be present, or, unless those not summoned were beyond summoning distance—as, for instance, abroad—there could not be a good electoral assembly." That being so, his lordship proceeded to consider whether under the material statutes the recorder was an elector. This case is generally regarded as authority for the principle that omission to summon a member of a corporation who is entitled to be present at a meeting invalidates the proceedings if such person is within "reasonable summoning distance."

In *Re Union Hill Silver Co., Ltd.*, Vice-Chancellor Malins had to consider a petition for the compulsory winding-up of a company constituted under the Companies Act, 1862. The company had passed, at two meetings, as was then necessary, a resolution, by the necessary majority, for voluntary winding-up, which resolution the petitioner alleged was invalid because some of the shareholders who were in America did not receive due notice of the meetings at which the resolutions were passed. In fact no attempt had been made to send notices to any of these shareholders. The provision relied on was s. 52 of the Act of 1862, which provides that in default of any regulations as to voting every member shall have one vote, and in default of any regulations as to summoning general meetings a meeting shall be held to be duly summoned, of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by Table A in the First Schedule to that Act. Article 95 of that Table A provides, precisely as did those of the Anglo-International Bank, Ltd., that notices should be served either personally or by posting them to the registered place of abode of the member. The Vice-Chancellor rejected the petition and made the following statement upon the main point: "I think that such a construction would be entirely opposed to the spirit and intention of the Act. It seems to me that the Act has reference only to shareholders who can be reached by the ordinary English post, and that in fact it was not necessary to serve these absent shareholders." It appears somewhat difficult to distinguish the law applicable to that case from that applicable to *Re Anglo-International Bank, Ltd.*

Finally, in *Re Mackenzie*, Astbury, J., had to consider whether resolutions for the reduction of capital were validly passed. The company's articles were in the usual form, requiring twenty-one days' notice of special general meetings, such notice to be served personally or by post. The preference shareholders were not served with any notice because in the then state of the company's finances they had no right to vote at general meetings Mr. Justice Astbury held that it was correct to omit service upon them because "there is no provision under the articles that the preference shareholders shall be summoned to a meeting at which they are not entitled to vote."

Having regard to these cases, and in particular to that before Vice-Chancellor Malins, it is somewhat surprising that Mr. Justice Bennett was not invited to say that it was unnecessary to make any attempt to serve the shareholders in enemy territory because they were out of reach. Moreover, it appears clear that the right to receive notice is ancillary to the right to vote, quite apart from the question whether it is difficult in practice for any given shareholder to exercise his right to vote. It was held in the last war that an enemy shareholder has no right to vote at meetings of a United Kingdom company (see *Robson* v. *Premier Oil Co.* [1915] 2 Ch. 124). As we understand the decision in that case, it was a broad decision that at common law an enemy shareholder is not entitled to vote. The case was one in which the enemy shareholder was a company whose business in the United Kingdom was being carried on by persons licensed to do so by the competent government department; even so, it was held that the proxy of the licensee was not entitled to vote.

Taking *Robson* v. *Premier Oil Co.* with the three other cases referred to, it is submitted that the result of *Re Anglo-International Bank, Ltd.*, might have been different if it had been argued before the learned judge that the shareholders in enemy territory were not entitled to vote at the meeting and were therefore not entitled to notices, and that even if they were theoretically entitled to vote, it was not necessary to try to give them notice because they were inaccessible. The point appears of some importance: if the case was correctly decided, all meetings of companies since the beginning of the war have been invalid, where the company has omitted to give notice to its enemy shareholders. That must have occurred frequently.

A Conveyancer's Diary.

"Issue."—II.

I COMMENTED last week on some of the troubles which can arise with clauses substituting "issue" for legatees who do not survive to the date of vesting. On the present occasion I shall suggest ways of avoiding such troubles.

Let us suppose that the draftsman is making the will of a father of a family. There is going to be a life interest for the widow with remainder to the children in equal shares absolutely. The first question is the vesting date for the remainders. The testator should be asked whether he desires the date to be his own death or that of the life-tenant. It will, no doubt, be explained to him that, if the date of his own death is taken as the vesting date, there will be the advantage that everyone concerned will know where he stands at once: the interests, being vested, become potential security for loans, and so on. The disadvantage is that the legatee may predecease the period of distribution, perhaps leaving no issue, and the reversionary interest will pass under his will, attracting an extra lot of duty. It is difficult to lay down any general rule for deciding on this point, but on the whole, in the absence of special circumstances, I do not think it fair of a testator to make a will under which his children cannot acquire vested interests until the date when those interests vest in possession. If there is a reasonable degree of sympathy between the life-tenant and the children, the life-tenant might be given a power of appointment, but this always appears to me to be a step not to be taken lightly. Obviously, it will not be taken at all unless the life-tenant is the parent of the children; thus a testator would hardly give his second wife power to appoint among children some or all of whom were those of his first wife. But even where the life-tenant is the children's parent the testator must be very sure that he wishes to surrender to her the right to decide how much of his property each of his children is to have, for that is what he is doing; and he should be reminded that much may happen after his death: for example, his widow may marry again.

Whether there is or is not a power of appointment, the testator will have to face the question what he means to do with his property on the dropping of the life interest; if there is a power of appointment that question arises on the trust in default of appointment; if there is no power of appointment, the gift in question is a plain gift in remainder.

Assuming, then, that we are dealing with a simple gift in remainder: is the gift to vest at the life tenant's death or at the testator's? I lean, generally, towards vesting at the testator's death for the reason given above. But the testator may not die for a long time, and any number of vicissitudes may affect his children in the meantime. Therefore, the testator must provide for substitution of someone else if the beneficiary dies so soon. Who are to be substituted? Obviously, if the primary beneficiary has children but no remoter issue, they will take their parents' place. But what is to happen about grandchildren? I think that the ordinary common sense view of the matter is that the distribution should be *per stirpes*: there is no very obvious reason why the testator's child A should make his children X, Y and Z better off

in the aggregate than P and Q, their cousins, children of the testator's child B, through the mere fact of their being three to two. Of course a testator may wish to do something of the sort in order to help with the current ideas for a larger population; but if so his efforts will presumably manifest themselves in other parts of his will and not only in the substitutionary provisions.

Another point on which the testator should be asked to give clear instructions is whether in any circumstances he wishes to create a mixed class of children and children's children competing with one another. I doubt whether this idea is ever a popular one, but it is very easy to bring about by clumsy drafting. There is also the question whether the gift is to be one in joint tenancy or tenancy in common. Few testators will want a joint tenancy; but the draftsman must be quite sure that he inserts the necessary words of severance.

The first point, therefore, is to direct the testator's mind to the possibilities and to get definite instructions. Most of the troubles over substitutionary gifts arise from lack of clear thinking about what is intended, and most of the rest from lack of clear thinking on the draftsman's part.

I think that if their minds are properly directed to the point, nine testators out of ten will want to leave their residue *per stirpes* in tenancy in common, following down each *stirpes* only to the point where one gets a beneficiary. Thus, if the testator has children D, E and F, and if he were to be told that D would be alive at the vesting date, that E would be dead having left a living child M and some grandchildren, the children of M, while F would be dead having been predeceased by his son N, but having living grandchildren S and T, the normal testator would wish his estate to be split into equal thirds, of which D would take one, M would take one, and S and T would take the remaining third between them in equal moieties. He would not wish M's children to come in at all, reasoning that M is a sufficient representative of E's *stirps*. Such a position can be produced easily enough once one knows that it is intended.

I have constructed the following form which I believe gives effect to the ordinary testator's reasonable wishes in this matter, and which I put forward for criticism: "Subject thereto (i.e., to the life interest and to the life-tenant's power to appoint, if one is conferred) upon trust for all or any my children or child who survive me and attain or shall have attained the age of twenty-one years (or being female marry or shall have married under that age) if more than one in equal shares as tenants in common provided always that if any child of mine predeceases me leaving issue who attain the age of twenty-one years such issue shall take (in equal shares *per stirpes* if more than one) the share of the trust fund which their his or her respective parent or ancestor being a child of mine would have taken had he or she survived me (but so that no issue shall take whose parent survives to take a vested interest in the trust fund or any part thereof)."

I suggest that this form, for all its ponderousness, avoids the alternative dangers. On the one hand, it does not let in all the descendants of a deceased child, remoter descendants competing with less remote, and with or without the added complication of a joint tenancy. On the other hand, by introducing the concept of the share of the predeceasing "parent *or ancestor* being a child of mine" it preserves the stirpital arrangement without there being any question of the application of *Sibley* v. *Perry*, which is often unfair to remoter issue. Applied to the case I have imagined of D, M, and S and T, it saves S and T from losing everything under *Sibley* v. *Perry* as would occur if the word "parent" stood without "or ancestor."

War Legislation.

Statutory Rules and Orders, 1943.

No. 540/S.17. **Adoption of Children, Scotland.** Adoption Societies (Scotland) Regulations, April 5.

E.P. 557. **Agricultural Produce** (Preservation) Order, April 3.

No. 549/L.11. **County Court, England.** Procedure. County Court (No. 1) Rules, April 8.

E.P. 546. **Fish** (Distribution) Order, April 8.

E.P. 539. Fish Sales (Charges) Order, April 7.

E.P. 547. **Food** (Transport) Directions, April 8.

No. 411. **Income Tax Exemption.** Ulster and Colonial Savings Certificates (Income Tax Exemption) Regulations, April 7.

E.P. 533. **Manufactured Articles** (Electrical Equipment). Control of Industrial Electrical Equipment (No. 1) Order, April 6.

No. 532. **National Debt.** Savings Certificates (Amendment) Regulations, April 8.

E.P. 541/S.18. **Regulated Area** (No. 7) Order, April 6.

E.P. 542/S.19. Regulated Area (No. 8) Order, April 6.

E.P. 543. Regulated Area (No. 9) Order, April 6.

E.P. 544. Regulated Area (No. 10) Order, April 6.

Landlord and Tenant Notebook.

War Damage: Rent on Retention.

Section 10 of the Landlord and Tenant (War Damage) Act, 1939, provides for the consequences of giving a notice to retain a lease of land which is unfit by reason of war damage. The first subsection modifies the lease. Among the modifications is: "(*c*) Where the court is satisfied, on the application of the landlord made at any time before the land has been rendered fit, that part of the land is capable of beneficial occupation, the court may direct that there shall be payable by the tenant such rent, at such times and in respect of such period as the court may fix: Provided that the amount of rent fixed . . . shall not exceed such proportion of (i) the annual value at the time of the application of so much of the land as is at that time capable of beneficial occupation; or (ii) the full annual value reserved by the lease, whichever is less, as the period in respect of which the rent is payable bears to a year." "Annual value" is defined by s. 24 as "the rent at which the land might reasonably be expected to let from year to year, if the tenant undertook to pay all usual tenant's rates and taxes and the landlord undertook to bear the cost of repairs and insurance and the other expenses necessary to command that rent."

In *Re Orbit Trust, Ltd.'s Lease* (1943), 87 Sol. J. 121, Uthwatt, J., was called upon to lay down the principles upon which the amount of rent should be fixed in such circumstances. Applications to fix rents were made in respect of two properties, each consisting of a block of flats and garages, after the tenants had served conditional notices of retention. In the one case the property consisted of 107 flats and thirty-five garages, of which forty-seven and ten respectively had been rendered unfit; in the other of thirty-two flats and ten garages, of which only one flat had been rendered unfit. The rents payable under the leases were £1,750 a year in the one case, £750 in the other. These were ground rents, and it was the Landlord and Tenant (War Damage) Amendment Act, 1941, which made it possible for the lessees to serve notices of retention, and also to make those notices conditional notices.

The learned judge did not consider that ground leases ought to be subjected to any different principles than those to be applied to other leases; in either case the court had to fix "a rent fair and equitable in the light of all relevant circumstances," and his lordship then mentioned the maximum limit set by the proviso shown above. Further, the circumstance that Pt. I of the Act absolved either party from any duty to repair made consideration of covenants irrelevant. His lordship then observed that, by Pt. II of the 1939 Act, it lay with the tenant to make the first substantive move. This, no doubt, refers to s. 4, which contemplates that the tenant will decide whether to disclaim or to retain the lease. As the learned judge proceeded to point out, a tenant could not be compelled to remain unless his landlord was willing to undertake to make the premises fit; nor could he remain unless willing himself to make them fit. But the important thing was that the rent fixed should "reflect the fact of a common loss."

The judgment then refers to the introduction of the conditional notice by the 1941 Act, entitling the tenant to retain until the nature of the payment to be made by the War Damage Commissioners was decided. The general basis of Pt. II of the 1939 Act was that war damage causing unfitness was to be treated as a common disaster to be shared by landlord and tenant.

At this stage the learned judge had recourse to history in his search for guidance or support, and described the events that followed the Great Fire of London which, it should be borne in mind, was long considered the work of a public enemy if not an enemy alien. A court was set up by 18 & 19 Car. II, c. 7, of which his lordship cited the preamble: ". . . and for that it is just that every one concerned should beare a proportionable share of the losse according to their severall interests wherein in respect of the multitude of cases varying in their circumstances noe certaine generalle rule can be prescribed . . ." and considered the same principle of sharing loss was implicit in the 1939 legislation. There being no special circumstances in the cases before him, the rents should be fixed by reducing the reserved rents by proportions representing the reduced annual values.

The cases before the court may reasonably be considered "straightforward" ones, and I think we should do well carefully to note the reference to the absence of "special circumstances," and to bear in mind that the present trouble may give rise, as did the Great Fire, to a "multitude of cases varying in their circumstances." But the learned judge did not consider the fact that reduction of rent would prejudice a mortgagee of the reversion while benefiting a mortgagee of the term a relevant circumstance: for the Act dealt only with the landlord and tenant relationship. When laying down another principle, it looks as if the learned judge did not contemplate that fairness might demand departure therefrom. He held that the rent fixed should be fixed at the outset, once and for all, and the court should not be asked to embark upon a speculation on the future outlook for property.

In so far as this means that fluctuations in the estate market are to be disregarded, this is unexceptionable; but the statement

COUNTY COURT CALENDAR FOR MAY, 1943.

Circuit 1—Northumberland
HIS HON. JUDGE RICHARDSON
Alnwick, 7
Berwick-on-Tweed, 10
Blyth,
Consett, 21
Gateshead, 4
Hexham, 3
Morpeth, 6
††*Newcastle-upon-Tyne, 5 (R.B.), 11, 14 (J.S.), 18 (B.)
North Shields, 13
Seaham Harbour, 17
South Shields, 26
Sunderland, 12, 13 (R.B.), 25

Circuit 2—Durham
HIS HON. JUDGE GAMON
Barnard Castle, 13
Bishop Auckland, 25
Darlington, 12 (J.S.), 26
*Durham, 11 (J.S.), 24
Guisborough,
Leyburn 17 (R.)
††*Middlesbrough, 6, 19 (J.S.)
Northallerton, 27
Richmond,
††*Stockton-on-Tees, 4 (J.S.), 18
Thirsk, 20 (R.)
West Hartlepool, 5

Circuit 3 — Cumberland
HIS HON. JUDGE ALLSEBROOK
Alston, 21
Appleby, 15 (R.)
††*Barrow-in-Furness, 5, 6
Brampton,
*Carlisle, 19
Cockermouth, 13
Haltwhistle,
*Kendal, 18
Keswick,
Kirkby Lonsdale, 11 (R.)
Millom, 11
Penrith, 20
Ulverston, 4
††*Whitehaven, 12
Wigton,
Windermere, 6 (R.)
*Workington

Circuit 4—Lancashire
HIS HON. JUDGE PEEL, O.B.E., K.C.
Accrington, 20
††*Blackburn, 3, 5, (R.B.)* 10, 17 (J.S.)
††*Blackpool, 5, 6, 7 (R.B.), 12, 19 (J.S.)
Chorley, 13
*Clitheroe, 18 (R.)
Darwen, 21 (R.)
Lancaster, 7
††*Preston, 4, 11, 14 (J.S.), 21 (R.B.)

Circuit 5—Lancashire
HIS HON. JUDGE HARRISON
††*Bolton, 12, 18 (J.S.), 26
Bury, 10 (J.S.), 17, 31 (J.S.)
*Oldham, 13, 20, 27 (J.S.)
*Rochdale, 21 (J.S.), 28
*Salford, 11, 14, 19, 24, 25

Circuit 6—Lancashire
HIS HON. JUDGE CROSTHWAITE
HIS HON. JUDGE PROCTER
††*Liverpool, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31
St. Helens, 5, 19
Southport, 4, 18
Widnes, 7
*Wigan, 6, 20

Circuit 7—Cheshire
HIS HON. JUDGE BURGIS
Altrincham, 5, 12 (J.S.)
*Birkenhead, 3, 4, 12 (R.), 19 (J.S.), 26 (R.)
Chester, 11
*Crewe, 14
Market Drayton, 21
Nantwich, 7
*Northwich, 20
Runcorn, 18
*Warrington, 6, 13 (J.S.)

Circuit 8—Lancashire
HIS HON. JUDGE RHODES
Leigh, 14, 21
††*Manchester, 10, 11, 12, 13, 14 (B.), 17, 18, 19, 20, 24, 25, 26, 27, 31

Circuit 10—Lancashire
HIS HON. JUDGE RALEIGH BATT
*Ashton-under-Lyne, 7 31 (B.)
*Burnley, 13, 14
Colne, 12
Congleton, 21
Hyde, 19
*Macclesfield, 6, 11 (B.)
Nelson,
Rawtenstall, 5
Stalybridge, 20, 27 (J.S.)
*Stockport, 4, 18, 26 (J.S.), 28 (B.)
Todmorden, 11

Circuit 12—Yorkshire
HIS HON. JUDGE NEAL
*Bradford, 5 (R.B.), 11, 14 (J.S.), 26
Dewsbury, 27
*Halifax, 20, 21 (J.S.)
*Huddersfield, 18, 19 (J.S.)
Keighley, 13
Otley, 12
Skipton, 10
Wakefield, 25

Circuit 13—Yorkshire
HIS HON. JUDGE ESSENHIGH
*Barnsley, 5, 6, 7
Glossop, 19 (R.)
Pontefract, 10, 11, 12
Rotherham, 18, 19
*Sheffield, 4 (J.S.), 7 (R.), 13, 14, 20, 21, 25 (J.S.), 27, 28

Circuit 14—Yorkshire
HIS HON. JUDGE STEWART
Easingwold,
Harrogate, 7 (R.), 14
Helmsley,
Leeds, 4 (R.B.), 5, 6 (J.S.), 12, 13 (J.S.), 19, 26, 27 (J.S.)
Ripon, 11
Tadcaster, 18
York, 25

Circuit 16—Yorkshire
HIS HON. JUDGE GRIFFITH
Beverley, 6 (R.), 7
Bridlington, 3, 31
Goole, 18
Great Driffield, 17
††*Kingston-upon-Hull, 10 (R.), 11 (R.), 12, 13, 14 (J.S.), 17 (R.B.), 24 (R.)
New Malton, 19
Pocklington,
*Scarborough, 4, 5, 11 (R.B.)
Selby,
Thorne, 27
Whitby, 5 (R.), 6

Circuit 17—Lincolnshire
HIS HON. JUDGE LANGMAN
Barton-on-Humber, 7
††*Boston, 6 (R.), 13, 20 (R.B.)
Brigg, 3
Caistor,
Gainsborough, 24, 28 (R.)
Grantham, 21
††*Great Grimsby, 4, 5 (J.S.), 6 (R.B.), 19 (J.S.), 20
(R. every Wednesday)
Holbeach, 6 (R.)
Horncastle, 20 (R.)
*Lincoln, 6 (R.) (R.B.), 10
*Louth, 25
Market Rasen, 26
Scunthorpe, 4 (R.), 18
Skegness, 12
Sleaford, 11
Spalding, 14
Spilsby, 7 (R.)

Circuit 18—Nottinghamshire
HIS HON. JUDGE HILDYARD, K.C.
Doncaster, 5, 6, 7, 24
East Retford, 11 (R.)
Mansfield, 3, 4
Newark, 17, 28 (R.)
*Nottingham, 6 (R.B.), 12, 13 (J.S.), 14, 19, 20, 21 (B.)
Worksop, 4 (R.), 18

Circuit 19—Derbyshire
HIS HON. JUDGE WILLES
Alfreton, 18
Ashbourne,
Bakewell, 11
Burton-on-Trent, 19 (R.B.)
Buxton, 17
*Chesterfield, 14, 21
*Derby, 12, 25 (R.B.), 26, 27 (J.S.)
Ilkeston, 4, 25
Long Eaton, 20
Matlock, 31
New Mills,
Wirksworth, 13

Circuit 20—Leicestershire
HIS HON. JUDGE GALBRAITH, K.C.
Ashby-de-la-Zouch, 20
*Bedford, 12, 18 (R.B.)
Bourne,
Hinckley, 19
Kettering, 11
*Leicester, 3, 4, 5 (J.S.), (B.), 6 (B.), 7 (B.)
Loughborough, 18
Market Harborough, 17
Melton Mowbray, 14, 28 (R.)
Oakham, 21
Stamford, 10
Wellingborough, 13

Circuit 21—Warwickshire
HIS HON. JUDGE DALE
HIS HON. JUDGE FINNEMORE (Add.)
*Birmingham, 3, 4, 5, 6, 7, 10, 11 (B.), 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31

Circuit 22—Herefordshire
HIS HON. JUDGE ROOPE REEVE, K.C.
Bromsgrove, 21
Bromyard,
Evesham, 19
Great Malvern, 3
Hay, 5
*Hereford, 11, 20
*Kidderminster, 4, 18
Kington, 12
Ledbury,
*Leominster, 10
*Stourbridge, 6, 7
Tenbury,
*Worcester, 13, 14

Circuit 23 — Northamptonshire
HIS HON. JUDGE FORBES
Atherston, 13
Banbury, 28
Bletchley, 25
Chipping Norton, 19
*Coventry, 10, 11 (R.B.), 24, 31
Daventry, 12
Leighton Buzzard, 27
*Northampton, 3, 4, 10 (R.), 14 (R.B.)
Nuneaton, 5
Rugby, 6, 20 (R.)
Shipston-on-Stour, 17

Circuit 24 — Monmouthshire
HIS HON. JUDGE THOMAS
Abergavenny,
Abertillery, 11
Bargoed, 12
Barry, 6
††*Cardiff, 3, 4, 5, 7, 8
Chepstow,
Monmouth, 18
††*Newport, 20, 21
Pontypool and Blaenavon, 19, 28
*Tredegar, 13

Circuit 25—Staffordshire
HIS HON. JUDGE CAPORN
*Dudley, 4, 18 (J.S.), 25
*Walsall, 13 (J.S.), 20, 27 (J.S.)
*West Bromwich, 12 (J.S.), 19, 26 (J.S.)
*Wolverhampton, 7, 14 (J.S.), 21, 28 (J.S.)

Circuit 26—Staffordshire
HIS HON. JUDGE FINNEMORE
Burslem,
*Hanley, 13, 27, 28
Leek, 10
Lichfield,
Newcastle-under-Lyme, 11
*Stafford, 14
*Stoke-on-Trent, 12
Stone, 24
Tamworth,
Uttoxeter, 21

Circuit 27—Middlesex
HIS HON. JUDGE TUDOR REES
Whitechapel *(Sitting at Shoreditch County Court)*. **7, 14, 21, 28**

Circuit 28-Shropshire
HIS HON. JUDGE SAMUEL, K.C.
Brecon, 14
Bridgnorth, 12
Builth Wells, 6
Craven Arms, 4
Knighton, 5
Llandrindod Wells, 7
Llanfyllin,
Llanidloes,
Ludlow, 10
Machynlleth,
Madeley, 13
*Newtown,
Oswestry, 4
Presteign,
*Shrewsbury, 17, 20
Wellington, 18
Welshpool,
Whitchurch, 19

Circuit 29—Caernarvonshire
HIS HON. JUDGE EVANS, K.C.
Bala,
††*Bangor, 24
Blaenau Festiniog, 11
*Caernarvon, 26
Colwyn Bay,
Conway,
Corwen,
Denbigh,
Dolgelly,
Flint,
Holyhead,
Holywell, 3
Llandudno, 6
Llangefni, 25
Llanrwst, 21 (R.)
Menai Bridge,
Mold, 18
*Portmadoc, 10
Pwllheli, 21
Rhyl, 5
*Ruthin, 13
Wrexham, 13 (R.), 19, 20

Circuit 30 — Glamorganshire
HIS HON. JUDGE WILLIAMS, K.C.
*Aberdare, 4
Bridgend, 24 (R.), 25, 26, 27, 28
Caerphilly, 20 (R.)
Merthyr Tydfil, 6 7
*Mountain Ash, 5
Neath, 18, 19, 20
*Pontypridd, 11, 12, 13, 14
Port Talbot, 21
*Porth, 10
*Ystradyfodwg,

Circuit 31—Carmarthenshire
HIS HON. JUDGE MORRIS, K.C.
Aberayron, 8
††*Aberystwyth, 21
Ammanford, 5
Cardigan,
††*Carmarthen, 4
††*Haverfordwest, 18
Lampeter,
Llandilo,
Llandovery, 15
Llanelly, 25, 27
Narberth, 17
Newcastle-in-Emlyn,3
Pembroke Dock,
*Swansea, 10, 11, 12, 13, 14

Circuit 32—Norfolk
HIS HON. JUDGE ROWLANDS
Beccles,
Bungay, 3
Diss, 4
Downham Market, 6
East Dereham,
Eye,
Fakenham,
††*Great Yarmouth, 20, 21
Harleston, 24
Holt,
††*King's Lynn, 13, 14
†Lowestoft, 7
North Walsham,
*Norwich, 17, 18, 19
Swaffham, 5
Thetford, 11
Wymondham, 12

Circuit 33—Essex
HIS HON. JUDGE HILDESLEY, K.C.
Braintree, 7
*Bury St. Edmunds, 4
*Chelmsford, 10
Clacton, 25
Colchester, 5, 6
Felixstowe,
Halesworth, 18
Halstead, 21
Harwich,
††*Ipswich, 12, 13, 14
Maldon, 20
Saxmundham,
Stowmarket, 28
Sudbury, 26
Woodbridge 19

Circuit 34—Middlesex
HIS HON. JUDGE AUSTIN JONES
HIS HON. JUDGE TUDOR REES (Add.)
Uxbridge, 11, 18, 25

Circuit 35 — Cambridgeshire
HIS HON. JUDGE CAMPBELL
Biggleswade, 4
Bishops Stortford,
*Cambridge, 7 (R.B.), 12 (R.), 19 (J.S.), (B.), 20
Ely, 21
Hitchin, 10
*Huntingdon, 13, 28 (R.)
Luton, 6 (J.S.), (B.), 7, 21 (R.B.)
March, 31
Newmarket, 17
*Oundle,
Peterborough, 7 (R.), 11, 12
Royston, 14
Saffron Walden, 3
Thrapston, 5
Wisbech, 7 (R.), 18

Circuit 36—Berkshire
HIS HON. JUDGE HURST
*Aylesbury, 7, 21(R.B.)
Buckingham, 11
Henley-on-Thames,17
High Wycombe,
Oxford, 3, 17 (R.B.), 27
Reading, 6 (R.B.), 12, 13, 14
Thame,
Wallingford, 10
Wantage, 25
*Windsor, 4, 5, 18, 19
Witney, 26

Circuit 37—Middlesex
HIS HON. JUDGE HARGREAVES
Chesham, 4
*St. Albans, 11
West London, 3, 5, 7, 10, 12, 14, 17, 19, 21, 24, 26, 28, 31

Circuit 38—Middlesex
HIS HON. JUDGE ALCHIN
Barnet, 4, 18, 25
*Edmonton, 6, 7, 13, 14, 20, 21, 27, 28
Hertford, 5
Watford, 12, 19, 26

Circuit 39—Middlesex
HIS HON. JUDGE ENGLEBACH
Shoreditch, 3, 6, 7, 10, 11, 13, 14, 17, 18, 20, 21, 24, 25, 27, 28, 31

Circuit 40—Middlesex
HIS HON. JUDGE JARDINE, K.C.
HIS HON. JUDGE DRUCQUER (Add.)
HIS HON. JUDGE TUDOR REES (Add.)
Bow, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31

Circuit 41—Middlesex
HIS HON. JUDGE EARENGEY, K.C.
HIS HON. JUDGE TREVOR HUNTER, K.C. (Add.)
Clerkenwell, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31

Circuit 42—Middlesex
HIS HON. JUDGE DAVID DAVIES, K.C.
Bloomsbury, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31

Circuit 43—Middlesex
HIS HON. JUDGE LILLEY
HIS HON. JUDGE DRUCQUER (Add.)
Marylebone, 4, 5, 6, 7, 11, 12, 13, 14, 18, 19, 20, 21, 25, 26, 27, 28

Circuit 44—Middlesex
HIS HON. JUDGE SIR MORDAUNT SNAGGE
HIS HON. JUDGE AUSTIN JONES (Add.)
Westminster, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31

Circuit 45—Surrey
HIS HON. JUDGE HANCOCK, M.C.
HIS HON. JUDGE HURST (Add.)
*Kingston, 4, 7, 11, 14, 18, 21, 25, 28
*Wandsworth, 3, 5, 6, 10, 12, 13, 17, 19, 20, 24, 26, 27, 31

Circuit 46—Middlesex
HIS HON. JUDGE DRUCQUER
Brentford, 3, 6, 10, 13, 17, 20, 24, 27, 31
*Willesden, 4, 5, 7, 11, 12, 14, 18, 19, 21, 25, 26, 28

Circuit 47—Kent
HIS HON. JUDGE WELLS
HIS HON. JUDGE HURST (Add.)
Southwark, 3, 4, 6, 7, 10, 11, 12, 13, 14, 17, 18, 20, 21, 24, 25, 26, 27, 28
Woolwich, 5, 19

Circuit 48—Surrey
HIS HON. JUDGE KONSTAM, C.B.E., K.C.
Dorking, 20
Epsom, 12, 19, 26
*Guildford, 13, 27
Horsham, 18
Lambeth, 4, 6, 7, 10, 11, 14, 17, 21, 24, 25, 28, 31
Redhill, 5

Circuit 49—Kent
HIS HON. JUDGE CLEMENTS
Ashford, 3
*Canterbury, 11
Cranbrook,
Deal, 21
*Dover,
Faversham, 10
Folkestone, 4
Hythe, 14
*Maidstone, 7
Margate, 6
*Ramsgate,
††*Rochester, 19, 20
Sheerness, 13
Sittingbourne, 18
Tenterden, 17

Circuit 50—Sussex
HIS HON. JUDGE AUSTIN JONES
HIS HON. JUDGE ARCHER, K.C. (Add.)
Arundel, 28
Brighton, 5, 7, 13, 20, 21
††*Chichester, 14
*Eastbourne, 12
*Hastings, 4
Haywards Heath, 26
*Lewes, 17
Petworth, 24
Worthing, 18

Circuit 51 — Hampshire
HIS HON. JUDGE TOPHAM, K.C.
Aldershot,
Basingstoke, 12
Bishops Waltham,
Farnham, 14, 15
*Newport,
Petersfield, 21
††*Portsmouth, 3 (B.), 6, 13, 20
Romsey,
Ryde, 26
††*Southampton, 4, 11, 12 (B.), 18
*Winchester, 19

Circuit 52—Wiltshire
HIS HON. JUDGE JENKINS, K.C.
*Bath, 13 (B.), 20 (B.)
Calne,
Chippenham, 18
Devizes, 17
*Frome, 11 (B.)
Hungerford, 10
Malmesbury, 27
Marlborough,
Melksham, 21
*Newbury, 19 (R.)
*Swindon, 12, 19 (B.)
Trowbridge, 14
Warminster,
Wincanton, 21 (R.)

Circuit 53—Gloucestershire
HIS HON. JUDGE

Alcester, 19
*Cheltenham, 5, 18
Cirencester, 21
Dursley, 13
††*Gloucester, 6, 20
Newent, 26
Newnham, 12
Northleach, 11
Redditch, 7
Ross, 14
Stow-on-the-Wold, 10
Stratford-on-Avon, 27
Stroud, 25
Tewkesbury, 24
Thornbury, 3
Warwick, 28

Circuit 54—Somersetshire
HIS HON. JUDGE WETHERED
†*Bridgwater, 7
††*Bristol, 3 (J.S.) 10, 11, 12, 13, 14 (B.), 17, 18, 19, 20, 21 (B.), 31 (J.S.)
Minehead, 18 (R.)
*Wells, 4
Weston-super-Mare, 5, 6

Circuit 55 — Dorsetshire
HIS HON. JUDGE CAVE, K.C.
Andover, 12 (R.)
Blandford,
*Bournemouth, 14 (J.S.), 17, 18, 20 (R.)
Bridport, 25 (R.)
Crewkerne, 11 (R.)
*Dorchester, 7
Lymington,
†Poole, 5, 19 (R.)
Ringwood,
*Salisbury, 6
Shaftesbury, 3
Swanage,
*Weymouth, 4
Wimborne,
*Yeovil, 13

Circuit 56—Kent
HIS HON. JUDGE SIR GERALD HURST, K.C.
Bromley, 11, 12, 26
*Croydon, 3, 4, 5, 11 (R.), 18 (R.), 19, 24 25, 31
Dartford, 6, 20
East Grinstead, 18
Gravesend, 17
Sevenoaks, 10
Tonbridge 13
Tunbridge Wells, 27

Circuit 57-Devonshire
HIS HON. JUDGE THESIGER
Axminster, 17 (R.)
††*Barnstaple, 25
Bideford, 26
Chard, 20 (R.)
†Exeter, 13, 14
Honiton, 17
Langport, 24
Newton Abbot, 20
Okehampton, 21
South Molton,
Taunton, 10
Tiverton, 19
*Torquay, 11, 12
Torrington, 27
Totnes,
Wellington, 17 (R.)

Circuit 58—Essex
HIS HON. JUDGE TREVOR HUNTER, K.C.
Brentwood, 21 (R.)
Gray's Thurrock, 11 (R.)
Ilford, 3 (R.), 4, 10 (R.), 17 (R.), 18, 24, (R.), 28, 31 (R.)
Southend, 5 (R.), 12, 13 (R.), 14, 19 (R.B.)

Circuit 59—Cornwall
HIS HON. JUDGE ARMSTRONG
*Bodmin, 13
Camelford, 12
Falmouth, 17 (R.)
Helston, 7
Holsworthy,
Kingsbridge, 14 (R.)
Launceston, 14
Liskeard, 19
Newquay,
††*Penzance, 4
Plymouth, 21 (R.), 25, 26, 27
Redruth, 6
St. Austell, 11
Tavistock, 18
††*Truro, 5

The Mayor's & City of London Court
HIS HON. JUDGE DODSON
HIS HON. JUDGE BEAZLEY
HIS HON. JUDGE THOMAS
HIS HON. JUDGE MCCLURE
Guildhall, 3 4 5 (A.), 6, 7 (J.S.), 10, 11, 12 (A.), 13, 14 (J.S.), 17, 18, 19, 20, 21 (J.S.), 24, 25, 26 (A.), 27, 28 (J.S.), 31

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* = Bankruptcy Court
† = Admiralty Court
(R.) = Registrar
(J.S.) = Judgment Summonses
(B.) = Bankruptcy
(R.B.) = Registrar in Bankruptcy
(Add.) = Additional Judge
(A.) = Admiralty

of principle, perhaps, overlooks the fact that there may be different ways of rendering land fit "as soon as is reasonably practicable"—the obligation imposed upon the tenant by s. 10 (1) (*a*). Thus, in the case of damage done to a number of flats in a block, it is conceivable that the lessee might either plan his repair work so that all the finishing touches necessary for the standard of fitness to be attained are applied at once, or so that the various flats were restored to "fitness" one after another. In the latter case, he would be able to draw a certain amount of rent from his own tenant before having to resume payment of the full amount reserved by the head lease. It is true that subs. (1) (*d*) provides for increases in the rent fixed, but this is in the case of "unreasonable delay," and it seems doubtful whether the meaning of that expression can be stretched so as to embrace the effecting of repairs to different parts *seriatim* rather than *pari passu*, as it were.

Lastly, practitioners should note a wish expressed by the learned judge that firm offers should be made by the parties before or at an early stage in the proceedings: this to assist the court in dealing with the question of costs.

Review.

The Principles of Contract. By The Right Hon. Sir FREDERICK POLLOCK, Bart., K.C., D.C.L. Eleventh Edition by P. H. WINFIELD, of the Inner Temple, barrister-at-law. 1942. pp. xxxii and (with Index) 603. London: Stevens & Sons, Ltd. 32s. 6d. net.

The last edition of "Pollock on Contracts" to be revised by the author was published in 1936, a year before he died. Of the permanent place of this classic in the scientific literature of the law, Lord Wright has authoritatively written (53 L.Q.R. 162, 163). Professor Winfield—than whom, if we may say so with respect, no more accomplished editor would be possible—has wisely preserved the elegant text and, following the precedent that fifteen years ago he set in his edition of "Salmond," has marked by square brackets in the body of the book and in its notes the not inconsiderable additions and alterations which, *con amore* and with becoming modesty, he has fitted so gracefully and with such mellow scholarship into the *corpus*. The cases are completely noted until May, 1942: *Luxor* [1941] A.C. 108, provides the last paragraph of "Duties under Contract" (p. 224), and *Fibrosa* [1943] A.C. 32 (decided in June, 1942), is incorporated in "Destruction or Failure of Subject-matter" (pp. 247, 248), and in a last appendix. The frequent references to the *Law Quarterly Review* and to legal literature here and across the sea; the citations from the revised edition of Williston's monumental "Contracts," and from the great American "Restatement"; the new passages upon Frustration, Public Policy and Certainty; all this will render the present edition—companion in format with the fourteenth of "Pollock on Torts"—of the highest value to every branch of the legal profession. The production, in conformity with economy standards, is excellent and durable. To say that this edition is indispensable is simply to state a sober fact.

A few examples must suffice. Take, for instance, an excursus in a footnote upon the basis of an infant's liability for necessaries. Contract or quasi-contract? The basis, apparently, cannot be regarded as settled (p. 47). A stimulating passage incorporated in the text is found in a summary of a previous investigation by the learned editor in the L.Q.R. into two problems of the same subject: must the goods be necessaries both at the time of sale and at the time of delivery? And if necessaries are *sold* to an infant and he refuses delivery, is he liable? (pp. 60–62).

Professor Winfield makes frequent mention of the reports of the Law Revision Committee (*quorum pars magna fuit*), e.g., in the chapter on "Consideration." The committee had recommended that past consideration should suffice (see pp. 145, 146; also note 81 on p. 153). He also refers to their view that a contract for the benefit of a third party should be enforceable by the third party, subject to any defences that would have been valid between the contracting parties, but that the parties may cancel the contract before the third party has adopted it (pp. 173, 174). It does sometimes appear, he observes, that where the courts wish to enable X to sue, they make Y a trustee, but that where they wish to prevent him from suing, they invoke the absence of privity of contract! (p. 174, and references in note 51).

The most significant additions to the text, we think, are those on Frustration, and on Public Policy. On Frustration (pp. 232–235), the learned editor summarises the rival theories and cites a liberal selection from recent literature. He appears to favour the theory of the "implied term," though he regards the other theories as "more or less complete alternative ways" of stating "or perhaps masking" a basic principle: would any reasonable third party—i.e., the court itself—consider the supervening circumstances as altering the contractual obligation to such an extent as to make the contract no longer capable of being enforced? What a reasonable third party would decide cannot be precisely determined: an "elasticity" is necessary and injustice would result from trying to mechanise the law. Different results may be reached by different judges on apparently similar facts. With this diagnosis we agree, but we think that in the theory of the "implied term," as Professor Winfield defines it on p. 233, there is inherent a certain artificiality.

The note on Public Policy (pp. 295–297) is based upon the speeches in *Fender* v. *St. John-Mildmay* [1938] A.C. 1. The House was "emphatically against the extension of public policy," though the categories of public policy cannot be regarded as closed. Nevertheless, as Lord Atkin observed, the doctrine must not depend upon the "idiosyncratic inferences of a few judicial minds." Professor Winfield realistically describes it as "a principle of judicial legislation or interpretation founded on the current needs of the community." Variable therefore it is, essentially; compare many decisions on restraint of trade of not more than fifty years ago, which now are "museums of fossil economic theories." "However ripe a system may be, it must of necessity change with the changing needs of the community"; the agency of public policy cannot be discarded. The court proceeds, however, on the analogy of precedents; but where the point is *primae impressionis*, the criterion is not the personal opinion of the judge of what is good for the community, but what he thinks after argument and in the exercise of his judicial discretion is the best current sense of the community.

Manifest, it must be, from these few examples, that the eleventh edition of "Pollock on Contracts" is bound to have considerable influence upon the development of the law.

Books Received.

Burke's Loose-leaf War Legislation. Edited by HAROLD PARRISH, Barrister-at-Law. 1942 Volume, Pt. 14 and 1943 Volume, Pt. I. London: Hamish Hamilton (Law Books), Ltd.

The Juridical Review. Vol. LV. No. 1. April, 1943. Edinburgh: W. Green & Son, Ltd.

Commodity Control. By J. BRAY FREEMAN, of the Inner Temple, Barrister-at-Law, and N. HOWARTH HIGNETT, Solicitor of the Supreme Court. 1943. Royal 8vo. pp. xliv and (with Index) 298. London: Butterworth & Co. (Publishers), Ltd. 15s. net.

King Edward's Hospital Fund for London. The Story of its Foundation and Achievements, 1897-1942. By FRANK D. LONG. 1943. pp. 101. London: King Edward's Hospital Fund for London.

Social Control through Law. By ROSCOE POUND, Former Dean of the Harvard Law School. 1942. Large crown 8vo. pp. (with Index) 138. London: Oxford University Press. 12s. net.

Americans on Guard. By Col. O. R. MCGUIRE. Edited by RICHARD HARWOOD-STADERMAN. 1942. Medium 8vo. pp. xxix and (with Index) 400. Washington, D.C.: American Good Government Society. $5. London: The Mitre Press.

Obituary.

MR. JUSTICE FARWELL.

Mr. Justice Farwell, Judge of the Chancery Division since 1929, died on Thursday, 15th April, aged sixty-five. An appreciation appears at p. 141 of this issue.

MR. F. G. PALIN.

Mr. Frederick Gurdon Palin, barrister-at-law, died on Wednesday, 14th April, aged seventy-two. He was called by Gray's Inn in 1899, and was a Past President of the Chartered Institute of Secretaries.

MR. W. W. GOODE.

Mr. William Winter Goode, solicitor, of Langport, Som., died on Saturday, 3rd April, aged seventy-three. He was admitted in 1893.

MR. S. R. LATHAM.

Mr. Sidney Richard Latham, solicitor, of Stafford, died on Tuesday, 6th April, aged forty-three. He was admitted in 1931.

MR. H. S. RICHARDS.

Mr. Herbert Stanley Richards, solicitor, of Messrs. Richards and Flewitt, solicitors, of Nottingham, died on Sunday, 11th April, aged fifty-eight. He was admitted in 1909.

MR. E. A. WILKINS.

Mr. Ernest Augustus Wilkins, solicitor, of Messrs. Wilkins and Thompson, solicitors, of Uttoxeter, died on Friday, 9th April, aged sixty-two. He was admitted in 1905 and was Registrar of the Uttoxeter County Court and Clerk to the Justices for the Uttoxeter and Appletree (Sudbury) Petty Sessional Divisions.

The Minister of Works has appointed Sir MALCOLM TRUSTRAM EVE, K.C., to be Chairman of the Apprenticeship and Training Council for the Building Industry, the proposed appointment of which was announced in a White Paper. His position as Chairman of the War Damage Commission is not affected by this appointment.

To-day and Yesterday.

LEGAL CALENDAR.

April 19.—In August, 1749, there was a disorderly rising of Somerset people protesting against turnpike tolls. Led by a young gentleman farmer on horseback, carrying a silk handkerchief on a long staff as a standard, hundreds of countrymen were on the march, armed with axes, guns, pistols, pitchforks and rusty swords. They called themselves Jack a Lents and wore the letters J.L. in their hats. All round Bristol they went destroying the toll gates. At Bedminster they ranged themselves in the main street before the "George Inn" with beat of drum and the blowing of a hunting horn. Having drunk freely, they broke the windows of Mr. Durbin, a tithingman, who had caused three men to be arrested for demolishing turnpikes. Then one of the leaders ordered them to pull down the house, which they did. The disturbances lasted for the best part of a week. On the 19th April, 1750, John Perryman and Thomas Roach, two of the men concerned in pulling down the house were hanged at Ilchester.

April 20.—Viscount Guillamore died in Dublin on the 20th April, 1840. He had been raised to the peerage on his retirement from the office of Chief Baron of the Exchequer in Ireland. In that position, which he held from 1805 till 1831, he displayed very high talents and made the name he bore, Standish O'Grady, illustrious in Irish legal history. Chief Baron Pigot said of him: "O'Grady was the ablest man whose mind I ever saw at work." He was remarkable for wit as well as learning. His height and good looks set off a fine presence.

April 21.—When old Mr. Andrews, of Somerton, died suddenly, the coroner decided there must be an inquest. A day was fixed and the jury was summoned to meet at the "Red Lion," but when they had gathered together there appeared the clerk to Mr. Chard, the attorney employed by the daughter of the deceased to say that the holding of the inquest would be resisted, while the coroner declared he would use force if necessary. Repeated applications to Miss Andrews herself produced only the reply that there should not be any inquest taken as she had trouble enough besides. The house was fastened and threats to break in proved inefective. On the 21st April, 1830, the persons concerned were prosecuted at the Taunton Assizes for a conspiracy to prevent the coroner from holding the inquest. They were acquitted.

April 22.—On the 22nd April, 1667, Pepys noted: "To the Lord Chancellor's house, the first time I have been therein and it is very noble and brave pictures of the ancient and present nobility." This was the great palace which Lord Clarendon built for himself in Piccadilly.

April 23.—On the 23rd April, 1800, Sarah Lloyd, the eighteen year old servant maid of a lady living at Hadleigh, was hanged at Bury. At the assizes she had been indicted for letting into the house a burglar who set it on fire and also for larceny to the value of 40s. She was acquitted of the burglarious part of the charge, never tried for malicious house-firing and convicted only of larceny. So general was the belief in her complete innocence that her mistress, the committing magistrate, the foreman and several members of the grand jury organised a petition in her favour and made the most determined efforts to secure a reprieve. Those who visited her in prison found her seemingly "above impatience or discontent, fear or ostentation, exempt from selfish emotion." One of the members of the grand jury, who accompanied her to the scaffold as a last testimony of esteem, provided her with an umbrella, for it was a wet, windy morning. He noted how calm and dignified she was and how reluctant the executioner seemed. "When she gave the signal there was a recollected gracefulness and sublimity in her manner that struck every heart." After she had hung about a minute she raised her hands twice gently and evenly and gradually let them fall, as if to signify resignation and content.

April 24.—On the 24th April, 1752, Nicholas Mooney, a highwayman, was hanged at Bristol. He acknowledged the justice of his fate and when his irons were knocked off exclaimed: "Blessed be God! I am got rid of the chain of my sins." When the hangman put on the rope he said: "Welcome halter! I am saved as the thief upon the cross." At the gallows he cried: "Welcome gallows! I have deserved thee these many years." Most of the Methodists in Bristol attended his funeral in the Temple churchyard.

April 25.—On the 25th April, 1829, James Bird, a ruffianly looking fellow, was brought before the magistrate at Lambeth Street, charged with collecting a mob in the Whitechapel Road and hawking inflammatory publications. With violent gesticulations he had been holding forth against the Roman Catholic Relief Bill. The papers he was distributing, "A Conversation between St. Paul's Cathedral and the Monument," accused the Duke of Wellington of treason, and Peel of abetting him. He was ordered to find security for his good behaviour for three months.

Pilot-Officer John Whitton, formerly a Leicester solicitor's articled clerk, has passed his law final in a German prison camp.

Notes of Cases.

COURT OF APPEAL.

In re **Suburban and Provincial Stores, Ltd.; Suburban and Provincial Stores, Ltd.** *v.* **Lind.**

Lord Greene, M.R., MacKinnon and Goddard, L.JJ. 1st March, 1943.

Company—Resolution varying shareholders' rights—Application to cancel variation—Petitioner not holding 15 per cent. of shares—Validity of petition—Companies Act, 1929 (19 & 20 Geo. 5, c. 23), s. 61.

Appeal from a decision of Bennett, J.

The Companies Act, 1929, provides by s. 61 (1) that where the rights of any class of shareholders are varied "the holders of not less in the aggregate than 15 per cent. of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the court. Subsection (2): "An application under this section must be made within seven days . . ." On the 13th January, 1943, at meetings of the ordinary and deferred shareholders of S., Ltd., resolutions were passed fundamentally modifying the rights of the ordinary shareholders. The appellant, who held £400 nominal amount of the total of £3,000,000 issued ordinary share capital, by this petition under s. 61 asked that the resolution might be cancelled. In the petition the appellant stated that he had not been appointed by holders of 15 per cent. of the issued capital to make the application, but such appointment would be obtained. The company applied to have the petition dismissed on the ground that the petitioner did not hold 15 per cent. of the then capital. Bennett, J., struck out the petition.

LORD GREENE, M.R., said that it was argued for the appellant that an aggrieved shareholder who held less than 15 per cent. of the issued shares was entitled within seven days to present a petition and, if he obtained, after the presentation of the petition, authority from the necessary number to make up 15 per cent. of the aggregate holding, the authority operated retrospectively. That construction of the section was in his opinion wrong. The holding of 15 per cent. was a pre-requisite to the beginning of the proceedings under the section. The petition was demurrable unless, on the face of it, it showed a title in the petitioner to sue.

The appeal must be dismissed.

MACKINNON and GODDARD, L.JJ., agreed.

COUNSEL: *Valentine Holmes; Roxburgh*, K.C., and *Cecil Turner*.

SOLICITORS: *Swann, Hardman & Co.; Clifford-Turner & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

APPEALS FROM COUNTY COURT.

Baggs *v.* **London Graving Co.**

Scott, Goddard and du Parcq, L.JJ. 26th January, 1943.

Workmen's compensation—Basis of compensation for partial incapacity—Ability to earn "after the accident"—Conscript in army—Physical ability to earn—Evidence—Admissibility of letter from commanding officer—Workmen's Compensation Act, 1925 (15 & 16 Geo. 5, c. 84), s. 9 (3); Evidence Act, 1938 (1 & 2 Geo. 6, c. 28), s. 1 (1) and (2).

Employers' appeal from an award by His Honour Judge Jardine, sitting at Bow County Court, under the Workmen's Compensation Act, 1925.

The accident happened on 5th October, 1940, and resulted in the amputation of the workman's index finger. Full compensation was paid until 24th August, 1941, when a medical certificate was produced and the compensation was stopped. On 11th November, 1941, the workman tried to work but found he was unable. On 28th November, 1941, he filed an application for compensation on the basis of total incapacity. On 17th December, 1941, he was called up under the National Service (Armed Forces) Acts, and duly enlisted as a conscript in the Royal Army Service Corps. On 12th January, 1942, he was awarded by the arbitrator full compensation, 35s. a week, until 18th December, 1941, on which date he held that the incapacity ended, but liberty was given to apply. The present application was for a review. When it came before the learned county court judge, *Jones* v. *Amalgamated Anthracite Collieries, Ltd.* (1942), 2 All E.R. 600, had been heard but not decided. The county court judge treated as earnings the pay and allowances of the workman in the Royal Army Service Corps. In that case the court decided that such pay and allowances were immaterial and had to be completely disregarded in considering earnings under s. 9 (3) of the Workmen's Compensation Act, 1925.

GODDARD, L.J., said that in view of the decision in *Jones* v. *Amalgamated Anthracite Collieries, Ltd.*, 168 L.T. 49, the county court judge had not taken into account the proper figures. He had to disregard the man's pay and allowances in the Army and consider what he was able to earn in the labour market. He would have to find out, having regard to the incapacity from which the man was suffering, what he was able to earn in the sense of what his physical capacity would allow him to earn. Another point raised in the appeal was that in order to show the change of circumstance and to show that the incapacity was still present and was a real incapacity debarring the man from being in the position of a workman able to earn full wages, letters had been read from the man's commanding officer. It was open to question whether all the statements in the letters were strictly admissible under s. 1 (1) and (2) of the Evidence Act, 1938, but some of them would clearly be admissible—statements, for instance, that the workman was in a certain medical category. The officer commanding a unit must know of his own knowledge in what medical category his men were. With regard to such statements as that the man's capacity for work had definitely been impaired, the commanding officer could state that because he had the man under his personal observation he could see

this. Undue delay and expense would be caused if the commanding officer had to be brought from Perthshire. The letters were, therefore, admissible, and the judge must use his own discretion, as no doubt he did, as to what weight he could attach to them. The case must go back to the county court judge to find what the man was "able to earn in some suitable employment or business after the accident," bearing in mind that that referred to his physical capacity to earn.

DU PARCQ, L.J., said that it was quite plain from the first words of s. 9 that the Legislature intended an injured workman to be compensated for the incapacity, whether total or partial, resulting from the injury and not for any incapacity resulting from anything else. It was plain that the words "after the accident" meant, in the context, not merely "after" but also implied some cause or connection. He was bound by *Jones* v. *Amalgamated Anthracite Collieries, Ltd.* (1942), 2 All E.R. 600.

SCOTT, L.J., agreed.

COUNSEL: *G. L. Lynskey*, K.C., and *W. H. Duckworth*; *J. R. Ogilvie Jones* and *F. Gottman*.

SOLICITORS: *Carpenters*; *Cliftons*.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

CHANCERY DIVISION.

In re **Engels**; **National Provincial Bank, Ltd.** *v.* **Mayer.**

Uthwatt, J. 30th March, 1943.

Will—Construction—Charitable legacy—Gift over on an event happening after the termination of the war—Validity—Perpetuity.

Adjourned summons.

The testator, who died in 1940, by his will, dated the 19th November, 1939, made a bequest in the following terms: "I give (free of death duty) the sum of £500 Three and a half per cent. War Loan to the endowment fund of the German Evangelical Church, Great Horton, in the City of Bradford, provided that after the termination of the present war with Germany services in the German language be held in the said church . . . and I declare that if the said legacy shall fail, then the said sum of £500 Three and a half per cent. War Loan shall fall into and form part of the residue of my estate." The executors of the will took out this summons asking whether this legacy failed for uncertainty or as infringing the rule against perpetuities.

UTHWATT, J., held that upon the true construction of the will the bequest took effect as a gift of the war loan to the trustees of the endowment fund of the church upon trust to apply it for charitable purposes, subject to a gift over in favour of residue if the services ceased to be held in German as a general matter of church practice after the war. He then said, a subsidiary point arose whether the gift over was effective in law. If the gift over was in favour of another charity, the rule against perpetuities would not operate; but the gift over was not in favour of another charity, and he had to consider therefore if one could say, not whether the war might or might not end within the period limited by the perpetuity rule, but whether one could say now that it was necessarily the fact that that the interest of residue would vest within twenty-one years from the testator's death. It was obvious that this could not be said. In all probability the war would be over before that period, but as a practical certainty, and that was what the rule implied, it could not be said. He proposed to hold that the gift over was bad for perpetuity and the legacy vested unconditionally in the trustees of the endowment fund upon charitable trusts.

COUNSEL: *S. Pascoe Hayward*; *Wilfrid Hunt*; *Mulligan*; *Danckwerts*.

SOLICITORS: *Cunliffe & Airy*, for *Morgan Wright & Co.*, Bradford; *Blundell Baker & Co.*, for *Jonathon Knowles & Cox*, Bradford; *The Treasury Solicitor*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Parliamentary News.

HOUSE OF LORDS.

War Damage Bill [H.L.].
Amendments Reported. [15th April.

HOUSE OF COMMONS.

Courts (Emergency Powers) Bill [H.L.].
Evidence and Powers of Attorney Bill [H.L.].
Read Second Time. [15th April.
National Loans Bill [H.C.].
Read Third Time. [15th April.
Railway Freight Rebates Bill [H.L.].
Read First Time. [14th April.

QUESTIONS TO MINISTERS.

Sir R. TASKER asked the Chancellor of the Exchequer whether, in the case of the death of a person who is entitled to post-war credit under s. 7 of the Finance Act, 1941, the sum will be redeemed before the termination of hostilities in order that executors may wind up the estate of the deceased person.

Sir KINGSLEY WOOD: No, sir, but I would point out that the executors are not obliged to keep the estate open in the circumstances described by my hon. Friend as they may transfer the deceased's right to post-war credit to some other person (e.g., to the residuary legatee). They may effect such a transfer by applying to the Inspector of Taxes who issued the deceased's certificate, stating the full name and address of the person to whom the post-war credit is to be transferred: probate or letters of administration and the deceased's certificate should be sent with the application. The Inspector of Taxes will make the necessary record and issue a certificate to the person named, who will then become the person entitled to the post-war credit. If the personal representatives propose that the post-war credit should be divided between two or more persons the application to the inspector should state the amount appropriate to each, and each will then receive a certificate for his shares. [13th April.

Rules and Orders.

S.R. & O., 1943, No. 549/L.11.

COUNTY COURT, ENGLAND.—PROCEDURE.

THE COUNTY COURT (No. 1) RULES, 1943. DATED APRIL 8, 1943.

I, John Viscount Simon, Lord High Chancellor of Great Britain, in exercise of the power conferred on me by section 1 of the Administration of Justice (Emergency Provisions) Act, 1939,* and all other powers enabling me in this behalf, do hereby make the following Rules:—

1.—(1) These Rules may be cited as the County Court (No. 1) Rules, 1943.

(2) An Order and Rule referred to by number in these Rules means the Order and Rule so numbered in the County Court Rules, 1936,† as amended.

2. The following words shall be added to the proviso to paragraph (4) of Rule 31 of Order VIII (which limits the time for the issue of a successive summons):—

"and

(*c*) Where a defendant is out of England and Wales and service upon him has become impracticable, the successive summons may, with the leave of the court, be issued within 12 months of the time when, in the opinion of the court, service on him became practicable, whether by reason of his return to England or Wales or otherwise.

3. The following paragraphs shall be added to Rule 75 of Order XXV:—

"(3) Part II of this Order (which relates to warrants of execution against goods) shall apply to warrants of delivery, so far as applicable.

(4) The præcipe to be filed by the plaintiff in pursuance of Rule 13 of this Order shall be in Form 158 adapted for a warrant of delivery, and the plaintiff shall state therein whether he desires the warrant to be in Form 202, 203 or 204."

4.—(1) The following Rule shall be substituted for Rule 76 of Order XXV:—

"76.—(1) Where a warrant of delivery has been issued from a court in respect of goods which are out of the jurisdiction of that court, the registrar may send the warrant of delivery accompanied by a warrant in Form 153 to the registrar of any other court within the jurisdiction of which the goods are or are believed to be.

(2) On receipt of the warrant, the registar of the other court shall act in all respects as if the original warrant of delivery had been issued by the court of which he is registrar, and Rules 9, 10 and 11 of this Order shall apply with the necessary modifications."

(2) Rule 3 of the County Court (No. 1) Rule, 1942,‡ is hereby revoked.

5. The following Form shall be substituted for Form 153 as from the commencement of these Rules:—

Provided that a warrant in the form hitherto prescribed may continue to be used until the Lord Chancellor otherwiseorders for transmitting to a foreign court an order of commitment or a warrant of execution other than a warrant of delivery in Form 202:—

"153.

WARRANT WITH EXECUTION OR ORDER OF COMMITMENT TO REGISTRAR OF FOREIGN COURT.

(Seal.)

Whereas this warrant has been issued out of this Court,

And whereas the address at which the warrant is to be executed is within the jurisdiction of the County Court, of which you are the registrar.

[*or* Whereas the person against whom this orderof commitment has been issued is believed to be within the jurisdiction of the County Court of which you are the registrar.]

These are therefore to require you to cause the said warrant [*or* order of commitment] to be executed within the jurisdiction of the last-mentioned County Court.

Dated this day of . 19 .

Registrar.

To the registrar of the last-mentioned County Court."

6. These Rules may be cited as the County Court (No. 1) Rules, 1943, and shall come into operation on the 26th day of April, 1943.

Dated the 8th day of April, 1943. *Simon*, C.

* 2 & 3 Geo 6, c. 78. † S.R. & O. 1936 (No. 62) I, p. 282.
‡ S.R. & O. 1942 (No. 1070) I, p. 91.

S.R. & O., 1943, No. 603/L. 12.

SUPREME COURT, ENGLAND. PROCEDURE.

THE RULES OF THE SUPREME COURT (No. 1), 1943. DATED APRIL 13, 1943.

I, John Viscount Simon, Lord High Chancellor of Great Bitain, in exercise of the powers conferred upon me by the Administration of Justice (Emergency Provisions) Act, 1939,* and of all other powers enabling me in this behalf, and with the concurrence of two other Judges of theSupreme Court, do hereby make the following Rules of Court under Secion 99 of the Supreme Court of Judicature (Consolidation) Act, 1925†:—

1. The Principal Probate Registry at Llandudno, the Personl Application Department at Somerset House and the District Probate Rgistries shall, notwithstanding the provisions of Order LXIII, Rule 6, be open on Good Friday and Tuesday in Easter Week, 1943.

2. These Rules may be cited as the Rules of the Supreme Curt (No. 1), 1943.

Simon, C.
We concur. *Caldcote*, C.J.
Merrman, P.

* 2 & 3 Geo. 6, c. 78. † 15 & 16 Geo. 5, c. 49.